IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

CRP.No. 967 of 2007()

I.A 3500/2007 IN I.A. 3761/2000 IN OS.807/1993 of PRL.M.C.,IRINJALAKUDA

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REVN. PETITIONER: PETITIONERS/6TH & 7TH RESPONDENTS:

1. SHAILAJAN, S/O. PONMANISSERY GEORGE,
   KALLUR VILLAGE & DESOM, MUKUNDAPURAM TALUK.

2. ANNAM, W/O. PONMANISSERY GEORGE,
   KALLUR VILLAGE & DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: RESPONDENTS/PETITIONERS, RESPONDENTS 1-5:

1. POULOSE, W/O. PORATHUKKARAN THOMAN,
   KALLUR VILLAGE, MUKUNDAPURAM TALUK.

2. JOSE, S/O. THATTIKADA RAPPAI,
   CHERPU VILLAGE, MUKUNDAPURAM TALUK.

3. JOSE, S/O. VARUKKADAN KURIAPPAN,
   KOTTANELLUR VILLAGE, MUKUNDAPURAM TALUK.

4. ELYA, W/O. PONMANISSERY PAILOTH,
   KALLUR VILLAGE, MUKUNDAPURAM TALUK.

5. ANTHONY, S/O. PONMANISSERY PAILOTH,
   KALLUR VILLAGE, MUKUNDAPURAM TALUK.

6. MARY, D/O. PONMANISSERY PAILOTH,
   KALLUR VILLAGE, MUKUNDAPURAM TALUK.

7. SHAJI, S/O. PONMANISSERY PAILOTH,
   KALLUR VILLAGE, MUKUNDAPURAM TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P. NO. 967 OF 2007

Dated this the 6th day of November, 2007

ORDER

This petition is preferred against the order of the Principal Munsiff, Irinjalakuda in I.A. 3500/2007 in O.S. 807/1993. It was an application filed under Section 4 of the Partition Act. It is averred that the petitioners are residing in the undivided family house and therefore by virtue of the provisions under Section 4 of the Partition Act, they are entitled to purchase the property by paying the amount due to the purchaser, who is not a member of the family. The court below has not adverted to or considered the relevance of Section 4 of the Partition Act at all and instead simply disposed of the matter stating that the matter was posted for auction among sharers. Since auction was not carried out, it is possible for public auction. Therefore the petition was dismissed.

2. The said approach is totally erroneous. It is a valid right conferred upon a co-owner of an undivided family house and therefore it requires consideration at the hands of the court. Therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration after affording opportunities to all concerned to file their objections and then dispose of the matter in accordance with law. Till a final decision is taken, the court shall not sell the property in public auction.

With the above observations, the civil revision petition is disposed of.

M.N.KRISHNAN, JUDGE

vps